

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 11, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-34701-D-7 HCS-2	WILLIAM/HELEN SLINGLAND	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WILLIAM M. SLINGLAND AND HELEN M. SLINGLAND 5-14-14 [32]
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Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

2. 14-22401-D-7 GILBERTO/CARMEN MIRANDA
MDE-1
THE BANK OF NEW YORK MELLON
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
5-5-14 [33]

Final ruling:

This matter is resolved without oral argument. This is The Bank of New York Mellon's motion for relief from automatic stay. The court records indicate that the trustee has filed a statement of non-opposition and no other timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

3. 13-25804-D-7 BOBBY GARCIA AND WENTING
EJN-1 CHANG

MOTION TO EMPLOY PMZ REAL
ESTATE AS REALTOR(S)
5-14-14 [18]

Tentative ruling:

This is the trustee's motion to employ a real estate broker. The debtors have filed opposition. For the following reasons, the court will grant the motion, conditioned on the trustee filing a supplemental declaration of the broker.

This case was filed roughly 13 months ago. At that time, the debtors valued the property the trustee is seeking to list, which is their residence, at \$230,000. They scheduled a deed of trust against the property at \$226,563, and claimed the equity, \$3,437, as exempt under Cal. Code Civ. Proc. § 703.140(b)(1). The property has apparently appreciated in value since that time. The trustee's broker believes it is worth approximately \$379,950. The debtors disagree, but they acknowledge the property has appreciated; they have filed an amended Schedule A on which they list the value of the property at \$360,000. They have also filed an amended Schedule C on which they claim two exemptions in the property - one for \$75,000 under Cal. Code Civ. Proc. § 704.730(a)(1) and a second, for \$58,437, under Cal. Code Civ. Proc. § 704.730(a)(2). The code section is clear: "The amount of the homestead exemption is one of the following: [\$75,000 for a single person; \$100,000 for a debtor or spouse of a debtor and at least one other family member; \$175,000 for a person over 65 or a disabled person]." (Emphasis added.) Thus, the debtors' two separate exemptions are not properly claimed. If the second exemption, \$58,437, is omitted from the calculation, and if the debtors were to further amend their Schedule C to increase the first exemption to \$100,000 to account for the fact that the debtor and joint debtor both live in the residence, it appears there is still significant non-exempt equity in the property, even if the debtors' alleged value, \$360,000, proves to be the more accurate.

In any event, the court has not been asked to approve a sale, only to permit the trustee to employ a broker. The trustee is entitled to test the waters to determine whether a sale is possible that would generate funds for

the estate. The debtors have obtained an appraisal of the property, and have submitted a copy as an exhibit. The appraisal is hearsay, and will not be considered. However, even if the appraisal were submitted in admissible form, the court would allow the trustee to employ a broker to market the property.

There is one problem. The supporting declaration does not satisfy applicable rules regarding disclosure of connections. The trustee's proposed broker states he does not have any connection with the debtors, the trustee, the United States Trustee, or any person employed in the Office of the United States Trustee. The declaration is deficient because it does not identify all the parties as to whom connections must be disclosed, as listed in Fed. R. Bankr. P. 2014, and does not purport to disclose connections of PMZ Real Estate with those parties.

The court will hear the matter, and conditioned on the submission of a satisfactory supplemental declaration of the broker, will grant the motion.

4.	14-21505-D-7	ROGELIO CABAGNOT AND	MOTION FOR RELIEF FROM
	APN-1	JEANNETTE DANO	AUTOMATIC STAY
	TOYOTA MOTOR CREDIT		5-13-14 [40]
	CORPORATION VS.		

Final ruling:

This case was dismissed on May 29, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

5.	12-41510-D-7	DAVINA MORENO	MOTION TO COMPROMISE
	DNL-3		CONTROVERSY/APPROVE SETTLEMENT
			AGREEMENT WITH LORA LEE, NORMA
			JEAN THOMPSON, ROBERT ANDREW
			PAGENKOPF AND INHERITANCE
			FUNDING COMPANY, INC.
			5-9-14 [50]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

6. 12-34516-D-7 RICHARD HARVEY AND WENDY MOTION FOR COMPENSATION FOR
DNL-4 LUENENBERG HARVEY GONZALES & SISTO LLP,
ACCOUNTANT(S)
5-14-14 [119]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

7. 12-34516-D-7 RICHARD HARVEY AND WENDY MOTION FOR COMPENSATION BY THE
DNL-5 LUENENBERG HARVEY LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
5-14-14 [124]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

8. 13-36033-D-7 MARIA MENDEZ MOTION TO EMPLOY PMZ REAL
HCS-3 ESTATE AS REALTOR(S)
5-9-14 [39]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the application for authorization to employ Bob Brazeal of PMZ Real Estate as realtor for trustee is supported by the record. As such the court will grant the application for authorization to employ Bob Brazeal of PMZ Real Estate as realtor for trustee. Moving party is to submit an appropriate order. No appearance is necessary.

9. 13-25235-D-7 AARON THAO AND MALIA YANG MOTION TO COMPROMISE
DNL-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH F.C. FRANCHISING
SYSTEMS, INC.
5-12-14 [22]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

10. 14-23838-D-7 VIRGINIA GARLINGHOUSE MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
4-14-14 [5]

11. 14-24247-D-7 ROSA ESTRADA MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
4-25-14 [5]

12. 11-41448-D-7 GHANSHYAM/JIGNASA PATEL MOTION TO COMPROMISE
HCS-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GHANSHYAM
Final ruling: DADUBHAI PATEL AND JIGNASA G
PATEL
5-14-14 [230]

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

13. 10-42050-D-7 VINCENT/MALANIE SINGH CONTINUED MOTION FOR ENTRY OF
12-2444 CDH-1 DEFAULT JUDGMENT
BURKART V. THOMSON 4-16-14 [54]

Final ruling:

This is the plaintiff's motion for entry of a default judgment against the defendant. The hearing was continued to allow the plaintiff to correct a service defect. The court's civil minutes indicate the hearing was continued to this date, June 11, 2014; however, the plaintiff's supplemental notice of hearing states the hearing was continued to June 25, 2014. The court will therefore continue the hearing to June 25, 2014, at 10:00 a.m. No appearance is necessary on June 11, 2014.

14. 14-22151-D-7 RAYMOND SADOWSKI
PD-1
CITIMORTGAGE, INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-29-14 [20]

Final ruling:

This motion has been withdrawn by the moving party. As such, the matter is removed from calendar. No appearance is necessary.

15. 13-31754-D-11 VICTOR/SVETLANA PARSHIN
VP-1

MOTION TO CONVERT CASE TO
CHAPTER 13
5-8-14 [89]

Final ruling:

This is the debtors' motion to convert this case from a chapter 11 case to a chapter 13 case. The court is not prepared to consider the motion at this time because the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(4). On October 16, 2013, the debtors added two creditors to their Schedule G in this case, by amendment. However, they did not at that time or at any time since then file an amended master address list. Thus, when the attorney who served this motion printed the court's label matrix, which he used for service of the motion, it did not include those two creditors, and they were not served.

The court will continue the hearing to June 25, 2014, at 10:00 a.m., the moving parties to file a notice of continued hearing and to serve it, together with the motion and supporting declaration, on the two creditors added to their Schedule G in October of 2013, no later than June 11, 2014. The moving parties shall also serve the notice of continued hearing on the United States Trustee and the other creditors no later than June 11, 2014. The moving parties shall file proofs of service no later than June 13, 2014.

The hearing will be continued by minute order. No appearance is necessary on June 11, 2014.

16. 12-40761-D-7 MARIANNE MILLER
HCS-3

MOTION TO ABANDON
5-13-14 [111]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to abandon real and personal property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

Tentative ruling:

This is the application of Herum\Crabtree\Suntag ("Counsel") for compensation as counsel for the chapter 7 trustee in this case. Counsel seeks approval of \$29,379.75 in fees and \$474.69 in costs, for a total of \$29,854.44. No party-in-interest has filed opposition; however, the court has an independent duty to determine the reasonableness of all requests for compensation. In re Driscoll, 2014 Bankr. LEXIS 513, *10 (9th Cir. BAP Feb. 6, 2014), citing In re Eliapo, 298 B.R. 392,405 (9th Cir. BAP 2003). Because the fees requested appear to be excessive, the motion will be granted in part.

Counsel's application to approve the trustee's employment of a real estate broker is a good example. Counsel billed one hour of time by one attorney to draft it, at \$250 per hour, and 0.6 hours for another attorney to review and revise it, at \$295 per hour. The first attorney then billed 0.5 hours discussing the application and employment process with the broker, and another 0.8 hours revising the application. The first attorney also billed 1.5 hours to draft the supporting declarations, including his own declaration describing how the decision to list the property came about and how the broker arrived at a determination of its value - a declaration that was unnecessary. The second attorney then spent another 0.7 hours reviewing and revising the application and declarations, and the first attorney, another 1.0 hours reviewing and finalizing them. Thus, for what should have been a simple, straightforward employment application, Counsel billed a total of \$1,458.

The court then issued a ruling tentatively denying the application because the broker's declaration did not satisfy the requirements of Fed. R. Bankr. P. 2014(a) and LBR 2014-1 as to the disclosure of connections. In response to that ruling, Counsel filed a supplemental declaration of the broker. The first attorney billed 1.0 hours to review the tentative ruling and discuss it with the broker, 1.0 hours to draft the supplemental declaration, and another 1.5 hours to revise and edit it. The second attorney then billed 0.5 hours to review and revise it, and another 0.5 hours to review it in preparation for the hearing. These charges, necessitated by the deficiencies in the original declaration, added another \$1,170 to the bill. The court would add that the broker's supplemental declaration revealed two significant connections that had not been disclosed in the original declaration.

The court concludes that the total billed for what should have been a simple, routine application, \$2,628, was excessive. The application is of the sort that an attorney billing at \$250 per hour should be able to handle. Thus, the court will disallow the fees of the second attorney for reviewing and revising the moving papers, at \$295 per hour. The court will also disallow the first attorney's fees for revising the moving papers apparently to include the second attorney's suggestions, which should not have been necessary. In total, for this project, the court will disallow the fees charged by the second attorney on 1/12/14 - 0.6 hours, 1/15/14 - 0.7, and 2/4/14 - two charges totaling 1.0, for a total of \$678, and the fees charged by the first attorney on 1/13/14 - 0.8, 1/15/15 - 1.0, and 2/4/14 - 2.0, a total of \$950. These deductions will result in allowance of fees for the 2.5

hours spent drafting the application and declarations and 1.5 hours to review the tentative ruling, discuss it with the broker, and draft the supplemental declaration (although had the original declaration been properly drafted, this work would have been unnecessary), for total charges of \$1,000 to accomplish the trustee's employment of a broker. `

At the same time as Counsel filed the application to employ the broker, it also filed a motion to approve the sale of the property the broker had listed. (The sale had been arranged by the executors of the debtor's probate estate without the trustee's knowledge; the trustee then stepped into the pending sale as the seller.) The court has the same concerns about the time spent by multiple attorneys in preparing, reviewing, and revising the moving papers as it has about the application to employ the broker. The first attorney spent 2.8 hours drafting the motion and supporting declarations, at \$250 per hour. The second attorney spent 1.6 hours reviewing and revising them, at \$295 per hour; and the first attorney then spent another 1.0 hours reviewing and finalizing them, at \$250 per hour. The motion to sell the property was routine except it disclosed that the debtor had died post-petition, and that the executors of her probate estate had arranged a sale of the property that the trustee, when she discovered it, stepped into. Given that the moving papers were prepared by an attorney billing at \$250 per hour, the time spent reviewing, revising, and finalizing them should not have been necessary. The court will disallow fees for that time, a total of \$722.

Before beginning preparation of the sale motion, Counsel caused three different attorneys to spend significant amounts of time, almost 10 hours, reviewing the purchase and sale agreement and preliminary title report, discussing them with the broker and title company, discussing strategy among themselves, and communicating with the debtor's attorney. It is difficult to tell from Counsel's time entries why the majority of these services were not handled by the trustee rather than her attorneys. Further, the preliminary title report was simpler than most the court sees, including just one deed of trust and one property tax lien, and the estimated seller's closing statement was completely unremarkable. Yet one attorney, billing at \$315 per hour, billed 1.0 hours "reviewing the facts" regarding the sale and reviewing the closing statement; a second attorney, billing at \$295 per hour, billed 0.7 hours to review the title report and "review status of title" to the property; and a third attorney, at \$250 per hour, billed 0.5 hours discussing the details of the sale with the title company, 1.0 hours to review "docs from title company," 0.5 hours to review the title report (which required less than five minutes of the court's time), 0.6 hours discussing strategy with the other attorneys, and 0.5 hours discussing preparation of the motion with the debtor's counsel, title company, and broker, all before beginning the sale motion. The second and third attorneys, billing at \$295 and \$250, respectively, billed another 1.7 hours reviewing the debtor's schedules and researching a potential exemption claim that, apparently, was never made.

Again, so far as the court can see, there was nothing remarkable about the sale except that the buyer was found and the sale negotiated by the representative of the debtor's probate estate, and then taken over by the trustee. The court concludes that a portion of the services of the second and third attorneys concerning the sale, prior to beginning the sale motion, were duplicative and unnecessary; thus, the court will disallow 50% of the charges of those attorneys between December 20 and December 31, 2013, or \$1,181. The court is also concerned with the amount of time spent preparing an addendum to the purchase and sale agreement to include several unremarkable provisions.¹ The third attorney, billing at \$250 per hour, spent 0.5 hours reviewing the sale documents (the purchase and sale agreement and

earlier routine addenda prepared by the probate representative) to determine the amendments needed, and 1.8 hours drafting the addendum. The first attorney, at \$315 per hour, then spent 1.0 hours reviewing and revising the addendum; and the third attorney, at \$250 per hour, spent 0.8 hours revising the addendum to incorporate the trustee's suggestions, another 0.8 hours revising the addendum and sending it to the buyer, 0.5 hours reviewing the signed addendum and contacting the title company to change the name of the grantor to the trustee's name, and another 0.5 hours discussing with the title officer the vesting of title on the title report. The court will allow the charges for the 0.5 hours reviewing the original sale documents, the 1.8 hours drafting the addendum (which seems generous given its routine nature), and the 0.8 hours incorporating the trustee's suggestions, and will disallow the rest of these charges, a total of \$640, as duplicative and unnecessary.

For the same reasons, the court will disallow charges for portions of the time spent in preparing, reviewing, and revising a motion to employ an auctioneer to sell five yogurt machines and a separate motion for authority to sell the yogurt machines. An attorney billed 2.5 hours to draft the two motions, at \$250 per hour; a second attorney billed 2.0 hours to review and revise them, at \$295 per hour; and the first attorney billed another 1.2 hours revising and finalizing them. The court will disallow the time spent reviewing, revising, and finalizing: At \$295 per hour - 3/26/13 - 1.5, and 4/2/13 - 0.5; At \$250 per hour - 3/27/13 - 0.5, and 4/8/13 - 0.7, a total of \$890.

The court also has concerns about the time charged for drafting, reviewing, and revising a series of stipulations and orders extending the trustee's time to object to the debtor's discharge and to her claim of exemptions. Over the course of a year, the trustee entered into seven stipulations to extend her time to object to exemptions; the first three included extensions of her time to object to discharge. The successive stipulations, especially the last five, were almost identical. Yet for each stipulation and order, Counsel billed between an hour and two hours for one or more attorneys to draft and/or revise the stipulation, transmit it to the debtor's counsel, and/or "discuss strategy regarding exemption deadline" among themselves. (It does not appear the debtor's counsel ever sought to oppose a further extension of the deadline.) This is another example supporting the court's conclusion that this was not a case requiring the services of three different attorneys, or even two. The court will disallow 50% of the total time spent on the various stipulations and orders, or \$1,190.

The court also has concerns about the time spent between September 2013 and February 2014 regarding some yogurt machines that were property of the estate. It appears from the billing entries that two attorneys spent 5.9 hours and billed \$1,524 trying to determine the location of the yogurt machines and to get the debtor's son-in-law to turn them over. It does not appear these services had to be performed by attorneys instead of by the trustee herself; thus, the court will disallow 50% of those charges, or \$762.

Finally, the services of Counsel's paralegal for preparing, copying, mailing, and e-filing documents will be disallowed as secretarial in nature, and therefore, not compensable. See Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994). (To the extent the paralegal actually prepared documents, as in drafting them, the court is unable to determine how much time was spent because the services are "lumped" together.) Thus, the court will disallow the following, billed at \$90 per hour: 2/4/14 - 0.5, 2/10/14 - 1.0, and 2/11/14 - 0.2, a total of \$153. The paralegal also billed 1.5 hours to "update bills" for Counsel's fee application and another 4.5 hours for "revisions to bills and summary sheet." Absent a satisfactory reason why

the bills, which were generated by a computer program, were inaccurate as originally printed, thus requiring revisions, the court will disallow those charges, a total of \$540. (Counsel separately billed 2.0 hours, at \$295 per hour, for an attorney to draft the fee application, 1.0 hours, at \$315 per hour, for a different attorney to revise it, and 1.0 hours for the first attorney, at \$295 per hour, to finalize it.)

For the reasons stated, the court intends to grant the motion in part, deducting the sums discussed above, a total of \$7,706, from the fees requested, \$29,379.75, for a total of \$21,673 in fees to be approved. Adding costs of \$474.69 brings Counsel's total compensation to \$22,147.69.

The court will hear the matter.

1 The sale motion described the addendum as "(i) substituting the Trustee as a selling party in place of the Debtor's executors; (ii) stating that the sale of the estate's interest in the Property is 'as-is' and that the Trustee disclaims any representations or warranties relating to the Property; (iii) releasing the Trustee, the estate, and the Trustee's attorneys, agents, and employees from any claims involving the sale of the estate's interest; (iv) conditioning the Trustee's sale of the estate's interest in the Property on Bankruptcy Court approval; (v) stating that the Trustee's sale of the estate's interest in the Property is subject to overbidding; (vi) conditioning the realtor's receipt of a commission on the sale of the estate's interest in the Property on Bankruptcy Court approval, and (vii) stating that any expense that is to be paid by the seller will be paid solely from the sales proceeds." Motion to Sell, filed Jan. 15, 2014, at 4:5-13.

18. 12-40761-D-7 MARIANNE MILLER
JES-2

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
5-13-14 [106]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

19. 09-29162-D-11 SK FOODS, L.P.
11-2337 SH-12
SHARP V. SSC&L 2007 TRUST ET
AL

MOTION TO DISMISS ADVERSARY
PROCEEDING
5-14-14 [635]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to dismiss adversary proceeding is supported by the record. As such the court will grant the motion to dismiss adversary proceeding. Moving party is to submit an appropriate order. No appearance is necessary.

20. 13-27362-D-7 PATRICIA GARCIA
13-2280 REN-1
TRAVELERS EXPRESS COMPANY,
INC. V. GARCIA

MOTION FOR SUMMARY JUDGMENT
5-7-14 [17]

Final ruling:

A stipulated judgment was entered in this adversary proceeding on June 6, 2014. As such this motion is denied as moot. No appearance is necessary.

21. 14-20064-D-7 GLENN GREGO
KAZ-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-7-14 [109]

Tentative ruling:

This is Deutsche Bank National Trust Company's (the "Movant") motion for relief from stay. The Movant asserts that there is no equity in the real property that is the subject of the motion and, as this is a Chapter 7 case, the property is not necessary for an effective reorganization. Based on the foregoing, the Movant asserts relief from stay is required under Bankruptcy Code § 362(d)(2). The debtor has filed opposition asserting, (1) that the Movant does not have standing to pursue relief from stay; (2) that the debtor has initiated a loan modification with Movant's servicing agent and this process precludes foreclosure under State Law; and (3) that as a result of the debtor's appeal of this court's order converting the case from a Chapter 11 to a Chapter 7, the court does not have jurisdiction to hear this motion. The Movant has filed a response to the debtor's opposition (the "Response"). Pursuant to Bankruptcy Code ("Code") § 362(g) the moving party has the burden of proof to demonstrate that there is no equity in the property, and the debtor has the burden of proof on all other issues.

In the Response the Movant addresses the debtor's standing argument in detail. The court finds that the Movant's argument on standing is correct and adopts that argument herein. Thus, the court finds the Movant has standing to bring this relief from stay motion.

Next, the debtor asserts that he is attempting to negotiate a loan modification with Movant, and as a result, State Law prohibits Movant from foreclosing on the property. Regardless as to the limitations State Law may impose on Movant, it is not a proper defense to the relief from stay motion. Stay litigation is limited in scope to issues of adequate protection, equity in the property, and whether the property is necessary for an effective reorganization. The validity of the claim, or contract underlying the claim, is not litigated during a relief from stay hearing. In re Johnson, 759 F.2d 738 (9th Cir. 1985). Stay relief hearings do not involve a full adjudication on the merits of the claims, defenses, or counter-claims, but simply a determination as to whether creditor has a colorable claim. In re Robins, 310 B.R. 626 (9th Cir. BAP 2004).

Lastly, the debtor's assertion that this court cannot hear this motion because of the pending appeal is without merit. This argument is misplaced as "an interlocutory appeal divests the District Court of its control over only those aspects of the case involved in the appeal." Griggs v. Provident Consumer Disc.

Comp., 459 U.S. 5658 (1982). When an interlocutory appeal is taken the court retains jurisdiction to proceed with matters not involved in the appeal. Garcia v. Burlington Northern Comp., 818 F.2d 713 and 721 (10th Cir. 1987). Simply put, this motion does not involve the subject matter of the appeal. In light of the forgoing, the appeal of the court's conversion order does not divest this court of jurisdiction from determining this relief from stay motion.

The Movant has established there is no equity in the property and, as this is a Chapter 7, the property is not necessary for an effective reorganization. As such, the court will grant relief from stay under Code § 362(d) (2) by minute order.

The court will hear the matter.

22.	14-23368-D-7	JESSE M. LANGE	MOTION TO EMPLOY WEST AUCTION,
	BLL-2	DISTRIBUTOR, INC.	INC. AS AUCTIONEER(S)
			5-6-14 [15]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ West Auction, Inc. as auctioneer is supported by the record. As such the court will grant the motion to employ West Auction, Inc. as auctioneer. Moving party is to submit an appropriate order. No appearance is necessary.

23.	14-23368-D-7	JESSE M. LANGE	MOTION TO SELL
	BLL-3	DISTRIBUTOR, INC.	5-6-14 [21]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to sell is supported by the record. As such the court will grant the motion to sell. Moving party is to submit an appropriate order. No appearance is necessary.

24.	14-23368-D-7	JESSE M. LANGE	MOTION FOR ADMINISTRATIVE
	BLL-4	DISTRIBUTOR, INC.	EXPENSES
			5-13-14 [30]

Tentative ruling:

This is the trustee's motion for approval of certain expenses as administrative claims against the estate, and for authorization to pay up to \$2,500 per month for ongoing expenses necessary to protect the public health and safety. The motion was brought pursuant to LBR 9014-1(f) (1); no party-in-interest has filed opposition, and the relief requested in the motion is supported by the record. The court will grant the motion conditioned on the moving party filing a corrected proof of service with the "attached creditor's matrix," which was not attached to the original proof of service.

The court will hear the matter.

25. 13-28369-D-7 EDWIN GERBER MOTION TO COMPROMISE
PA-9 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH EDWIN GERBER,
EAGLE PAINTING AD DRYWALL,
INC., EAGLE LATH AND PLASTER,
INC., DAN DEWALD AND/OR MOTION
TO DISMISS ADVERSARY PROCEEDING
5-7-14 [182]

26. 12-37575-D-7 KORNELIU ONOFREICHUK AND MOTION FOR RELIEF FROM
KER-1 LYUDMYLA DEMYAN AUTOMATIC STAY
U.S. BANK, N.A. VS. 5-6-14 [32]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on January 14, 2013 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

27. 14-22475-D-7 ELIZABETH/GABRIEL GARCIA MOTION TO VALUE COLLATERAL OF
HDR-1 WEST LAKE SERVICES, LLC
5-14-14 [13]

Tentative ruling:

This is the debtors' motion to value collateral of Westlake Services LLC ("Westlake"); namely, a 2007 Dodge Grand Caravan SW, at \$4,157. The debtors estimate the balance owed to Westlake is \$6,730. (Westlake has filed opposition in which it indicates it is owed \$6,607.) The motion will be denied because the moving parties have failed to demonstrate they are entitled to the relief requested.

The moving papers cite no authority for the proposition that a debtor in a chapter 7 case may obtain an order valuing the collateral of a secured creditor. So far as the court is aware, the authority is to the contrary. Dewsnup v. Timm, 502 U.S. 410, 417-20 (1992); see also Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1169 (9th Cir. 2004); ["after Dewsnup, courts have refused to allow lien stripping in Chapter 7 cases."]; Davis v. Bank of Am., N.A. (In re Davis), 2012 Bankr. LEXIS 3631, *22-23 n.18 (9th Cir. BAP 2012) ["the Supreme Court has held [in Dewsnup] that, notwithstanding § 506(d), chapter 7 debtors are not permitted under the Bankruptcy Code to engage in lien stripping."].

Because the debtors, as chapter 7 debtors, are not entitled to the relief requested, the motion will be denied. The court will hear the matter.

28. 14-23579-D-7 GERALD ALLEY

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
4-7-14 [5]

29. 10-30583-D-7 STEVEN LONG
SMD-2

MOTION FOR COMPENSATION FOR
GABRIELSON & COMPANY,
ACCOUNTANT(S)
5-2-14 [491]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

30. 14-24788-D-11 CHRISTIAN/AMANDA BADER

ORDER TO APPEAR AND SHOW CAUSE
WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
5-7-14 [6]

31. 14-22492-D-12 CHARLES CORNELL
PGM-2

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
4-29-14 [35]

Tentative ruling:

This is the debtor's motion to value the collateral securing the claim of Ocwen Loan Servicing, LLC ("Ocwen"); namely, a first position deed of trust against the debtor's family farm, at \$160,000. (The amount due Ocwen, according to the debtor, is \$223,118.) Ocwen has filed opposition in which it points out, among other things, that it holds a lien on the property of the debtor listed in his schedules, but has been unable to find any loan or account related to the entirely different address listed in the motion. Thus, Ocwen claims the motion does not provide it with proper notice. The court is not convinced on this point, but will deny the

motion on another basis.

The debtor's declaration in support of the motion identifies the property listed on his schedules, against which Ocwen admits it holds a lien. It appears the address listed in the motion, which does not appear at all in the debtor's schedules, was simply an inadvertent holdover from a motion in another case used as a template for this motion. It is clear from the debtor's schedules and supporting declaration he is attempting to value the property in Garden Valley, California that is the subject of a lien in Ocwen's favor. However, the motion is not supported by any admissible evidence; thus, it will be denied for failure to comply with LBR 9014-1(d)(6) and failure to meet the debtor's burden of establishing the value of the property.

The debtor testifies that the fair market value of the property is \$160,000. He states he determined the value by reviewing zillow.com, reviewing comparable sales of homes in his neighborhood, and consulting with a realtor and/or broker.¹ His testimony is inadmissible. An owner of property may testify to his or her opinion of the value of that property, with limitations:

If testifying under [Fed. R. Evid.] 701, the owner may merely give his opinion based on his personal familiarity [with] the property, often based to a great extent on what he paid for the property. On the other hand, if he is truly an expert qualified under the terms of Rule 702 "by knowledge, skill, experience, training or education . . .," then he may also rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . ." pursuant to Rule 703. For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc.

² Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.).

Here, the debtor has testified not to his opinion as an owner but to his opinion based on zillow.com, consultations with a realtor and/or broker, and the debtor's review of comparable sales. As to the first two of these, the debtor's testimony is hearsay. As to the latter, the debtor is not purporting to testify as an expert in the field of property appraisal, and has not shown his qualifications to evaluate comparable sales. See In re Meeks, 349 B.R. 19, 22 (Bankr. E.D. Cal. 2006). Thus, the court gives no weight to the debtor's opinion. The court would add, however, that zillow.com gives the value of the property, as of May 29, 2014, as \$189,009,² almost \$30,000 higher than the debtor's valuation. The court takes judicial notice of that fact not for the purpose of proving the truth of the matter asserted; that is, the value of the property, but as demonstrating the unreliability of the debtor's testimony. To conclude, the debtor has failed to meet his burden of demonstrating, by admissible evidence, the value of the property.

Finally, Ocwen points out, and the court takes judicial notice, that the debtor's property is listed in the schedules filed by Kyleen Ann Cornell in a chapter 7 case filed March 11, 2014 in the bankruptcy court for the Western District of Washington, Case No. 14-41262. Ms. Cornell is listed by the debtor in this case as his ex-spouse; in her case, she listed the property as "Awarded to ex-spouse in

divorce decree." However, she listed the property as an asset of hers in that case; to the extent she still had an interest in the property as of March 11, 2014, it appears that interest became and remains property of the bankruptcy estate in her case. (Although the trustee in that case has issued a report of no distribution, the case remains open and the property has not been abandoned.) This is an issue the debtor may wish to address in any subsequent motion.

Because the debtor has failed to meet his burden of demonstrating the value of Ocwen's collateral, the court intends to deny the motion.

1 This is boilerplate language used by debtors in cases filed by the debtor's counsel. Given the frequency with which it is used and the fact that it is always used without any supporting detail, the court questions whether the statement is even true in any respect.

2 See http://www.zillow.com/homes/5314-marigold-mine-way,-garden-valley,-ca_rb/ (last visited May 29, 2014).

32. 14-22492-D-12 CHARLES CORNELL
PGM-3

MOTION TO USE CASH COLLATERAL
4-29-14 [40]

Tentative ruling:

This is the debtor's motion for an interim and final order authorizing him to use cash collateral of Ocwen Loan Servicing, LLC ("Ocwen"). The court intends to deny the motion because the moving party failed to serve Ocwen to the attention of an officer, managing or general agent, or agent for service of process, as required by Fed. R. Bankr. P. 4001(b)(1)(A), 9014(b), and 7004(b)(3). The moving party served Ocwen at two different post office box addresses, with no attention line, and through the attorneys who have filed a special notice request on Ocwen's behalf in this case, with no evidence those attorneys are authorized to accept service of process on Ocwen's behalf in bankruptcy adversary proceedings and contested matters pursuant to Rule 7004(b)(3).

The attorneys who filed the special notice request have, however, filed opposition to other motions of the debtor. The court will hear this matter if an appearance is made on Ocwen's behalf at the hearing; otherwise, the motion will be denied for lack of proper service.

33. 12-41497-D-7 KELLEY HODGSON
JRR-2

MOTION TO SELL
5-14-14 [41]

34. 13-29398-D-7 DAVID/CAROLYN SOWELS
TJW-10

MOTION TO AVOID LIEN OF WILLIAM
HEZMALHALCH ARCHITECTS, INC.
5-14-14 [79]

35. 14-23098-D-7 JAIME/YOLANDA ARAUJO
MMP-1

MOTION TO AVOID LIEN OF BH
FINANCIAL SERVICES
5-5-14 [13]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by BH Financial Services, Inc. (the "creditor"). The motion will be denied because the moving parties have failed to demonstrate they are entitled to the relief requested. Specifically, the moving parties have failed to demonstrate that the creditor holds a judicial lien that impairs an exemption to which the debtors would have been entitled. "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

The creditor has a judicial lien on the debtors' real property in Vallejo, California; however, the debtors have not claimed that property as exempt. As a claim of exemption in particular property is an essential prerequisite to avoiding a lien against that property, the debtor must claim such an exemption, even if in a nominal amount, such as \$1.00. See Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 290 n.4 (9th Cir. BAP 2003).

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

36. 13-28288-D-7 MICHAEL MATRACIA
TMP-2

CONTINUED MOTION TO DISMISS
CASE AND/OR MOTION TO VACATE
DISCHARGE OF DEBTOR
4-23-14 [87]

Final ruling:

The hearing on this motion has been continued to June 25, 2014 at 10:00 a.m. by stipulated order. No appearance is necessary on June 11, 2014.

37. 14-21909-D-7 TIFFANY VERNON-COMFORT MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 5-21-14 [12]

38. 14-20710-D-7 JERENE BONDS CONTINUED MOTION TO EMPLOY
BLL-4 COLDWELL BANKER SCOTT VALLEY
REAL ESTATE AS REALTOR(S)
AND/OR MOTION TO PAY
4-23-14 [27]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for order authorizing employment of realtor for trustee on a 6% commission fee basis is supported by the record. As such the court will grant the motion for order authorizing employment of realtor for trustee on a 6% commission fee basis. Moving party is to submit an appropriate order. No appearance is necessary.

39. 14-20031-D-7 ALFONSO MALDONADO AND MOTION FOR IMPOSITION OF CIVIL
UST-2 CONSUELO LARIOS PENALTY, FOR SANCTIONS AGAINST
DEBTORS' ATTORNEY FOR
MISCONDUCT UNDER FRBP 9011 AND
TO DISGORGE FEES
5-7-14 [23]

40. 14-22151-D-7 RAYMOND SADOWSKI CONTINUED MOTION TO EMPLOY
LSS-1 ROYNE REALTY LTD. AS PROPERTY
MANAGEMENT COMPANY
4-15-14 [17]

41. 14-21274-D-7 KARIN BRANDES
BHT-1
PROVIDENT FUNDING
ASSOCIATES, LP VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-23-14 [18]

42. 14-23574-D-7 JIMMIE MURILLO

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEES
5-19-14 [32]

43. 09-91476-D-7 KARLA CHANCELLOR
JCK-3

MOTION TO AVOID LIEN OF
FINANCIAL PACIFIC LEASING, LLC
5-28-14 [25]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Financial Pacific Leasing, LLC (the "creditor"), which is not an FDIC-insured institution. The motion will be denied because the moving party failed to serve the creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the creditor by certified mail to the attention of an officer, whereas a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be served by first-class mail (see preamble to Fed. R. Bankr. P. 7004(b)). The moving party also served the attorneys who obtained the creditor's abstract of judgment, whereas there is no evidence those attorneys are authorized to accept service of process on the creditor's behalf in bankruptcy adversary proceedings pursuant to Fed. R. Bankr. P. 7004. See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004).

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

44. 14-23995-D-11 JINTANA SHAW MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
FEDERAL NATIONAL MORTGAGE 5-22-14 [34]
ASSOCIATION VS.

Final ruling:

This case was dismissed on May 29, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

45. 13-29398-D-7 DAVID/CAROLYN SOWELS MOTION TO AVOID LIEN OF NORTH
TJW-11 VALLEY BANK
5-19-14 [84]

46. 13-29398-D-7 DAVID/CAROLYN SOWELS MOTION TO AVOID LIEN OF
TJW-12 FIDELITY NATIONAL TITLE
COMPANY, INC.
5-19-14 [99]

Final ruling:

This motion has been granted by stipulated order entered June 3, 2014. As such, the matter is removed from calendar. No appearance is necessary.

47. 13-21199-D-7 JAMES SCOTT CONTINUED MOTION BY DAVID T.
13-2156 DUNCAN TO WITHDRAW AS ATTORNEY
EVANS V. SCOTT 4-21-14 [27]

48. 08-31697-D-11 BRIAN/PATRICIA WARREN
DL-3

MOTION FOR CLARIFICATION OF
TERMS OF ORDER CONFIRMING PLAN
O.S.T.
5-29-14 [389]